

### **REMARKS**

The Applicants respectfully request the Examiner to reconsider the Present Patent Application in light of the amendments and arguments presented. The Applicants submit that the amendments presented in this First Amendment After Quality Review do not contain new matter.

#### **Patent Office Rejection under Section 102(b)**

In Section 1 of the First Office Action After Quality Review, the Patent Office rejected Claim 1-11 and 14-26 under Section 102(b) as being anticipated by Aristides. The Applicants have now amended Independent Claim 1 to more particularly point out the subject matter which they regard as their Invention:

1. (Currently amended.) A method for on-demand use of preselected content by a recipient, comprising the steps of:

utilizing the excess capacity of a network by conveying data over said network during a period of less than maximum usage;

5        said data including a plurality of different on-demand programming which may be viewed at said recipient's convenience;

receiving said data during said period of less than maximum usage;

accumulating said data over an extended period of time;

10        selectively retrieving ~~said data~~ one or more of said plurality of different on-demand programming by said recipient for on-demand use at a time after said extended period of time.

The new limitation, which has been added in lines 5 and 6, states:

“said data provides a plurality of different on-demand programming which may be viewed at said recipient’s convenience;”

Support in the Present Patent Application for this amendment appears in the  
5 Original Specification on Page 8, Lines 22-23.

This new limitation clearly and explicitly distinguishes the Applicants’ Invention from Aristides. The Applicants’ Claim 1 expressly recites the data recipients’ ability to choose a selection of programming from a stored library of choices. Aristides provides no choices, selections or controls for the recipient.

The Applicants have now also amended Independent Claim 11 to more particularly point out the subject matter which they regard as their Invention:

11. (Currently amended.) An apparatus comprising:

a gateway means for transmitting a plurality of digitized packets of data;

5 a relay means for receiving said plurality of digitized packets of data from said gateway means and for retransmitting during a time period when the total communications capacity of said relay means is not fully used;

a receiver means for collecting said plurality of digitized packets of data which are transmitted from said gateway means;

10 said receiver means including a storage means for accumulating said plurality of digitized packets of data incrementally over an extended period of time; and

15 means for selectively retrieving and using one or more of said plurality of digitized packets of data after a generally full program has been accumulated[.]

said plurality of digitized packets of data provides a plurality of different on-demand programming which may be viewed at said recipient's convenience.

The new limitation, which has been added in lines 13 and 14, states:

said plurality of digitized packets of data provides a plurality of different on-demand programming which may be viewed at said recipient's convenience.

This new limitation clearly and explicitly distinguishes the Applicants' Invention from Aristides. The Applicants' Independent Claim 11 expressly recites the data recipients' ability to choose from a selection of different programming from a stored library of choices. Aristides provides no choices, selections or controls for the recipient.

Aristides delivers a program guide for cable television viewers. Aristides' invention is only concerned with the delivery of content, and has nothing whatever to do with the use of the content. Aristides is only concerned with a system which efficiently distributes information, and offers no new features or controls to users. When a viewer wishes to see a schedule of programs, he or she looks at the program guide. The program guide is one single program without alternatives or

choices. The viewer has no role in a selection process. The viewer may either look at the program guide, or watch a program. The viewer has no control over the program guide— the guide is simply available for viewing, on or off. The program guide is one program, and does not include a library of programming that may be individually selected by a recipient at a time of the recipient's choosing. Aristides offers no user selection, choice or control.

Rejections under Section 103(a)

In Section 2 of the Office Action, the Patent Office rejected Claims 12 and 13 under Section 103(a) as being unpatentable over Aristides in view of Picco.

The Applicants respectfully submit that the amendments made to Claims 1 and 11 in this First Amendment After Quality Review overcome this rejection under Section 103(a). Neither Aristides nor Picco disclose, teach or suggest providing a recipient with the ability to select from a plurality of content selections at a time chosen by a recipient.

The Applicants submit that Independent Claims 1 and 11 are allowable.. The remaining Dependent Claims, which depend directly or indirectly from one of Claims 1 or 11, are each allowable, at least for the same reasons as their respective Parent Claims.

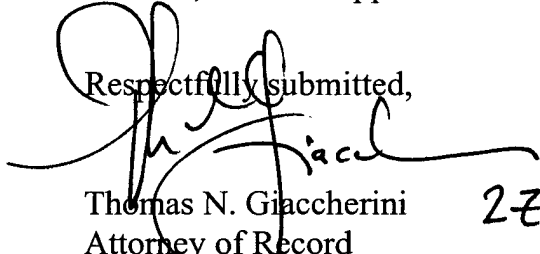
## CONCLUSION

### Section C- Request for Allowance

The Applicants respectfully submit that the amendments presented in this First Amendment After Quality Review do not contain new matter, and are fully supported by the Specification and Drawings as originally filed.

The Applicants respectfully request that the all of the Pending Claims be allowed, and this Application be passed to issue.

Respectfully submitted,

  
Thomas N. Giaccherini  
Attorney of Record  
Registration No. 31,075  
831.659.5300  
techlaw@ix.netcom.com

27 February  
2006.

Transmitted to the U.S. Patent Office  
with a Rule 8 Certificate by First Class Mail  
on Monday 27 February 2006.